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For the Polynesian.

A Dust Blow at Lahainaluna.

Dust, dust, dust!
Lahainaluna is the place for dust,
Whenever the wind, on a wild excursion,
Comes over the hills for the sake of diversion,
The hoofs of their galloping steeds "kick up"
Such a terrible dust as nothing can stop.
It enters the nostrils, it enters the eyes.
It enters the houses, it fills the skies;
It leaves in parlor, and pantry, and closet,
In garret, and cellar, its dark deposit;
Wherever an atom of dust can be,
No nook or cranny from dust is free.
You eat it and drink, and breath it you must,
And speedily swallow your "peck" of dust.
Who'er is unwilling to take it on trust,
Has only to spend a day or so
At Lahainaluna during a blow,
To be convinced that of all earth's nooks,
By travellers seen, or recorded in books,
Where a breathing creature his life would trust,
Lahainaluna, when blows the dust,
Must have the credit of being the worst.

Dust, dust, dust!
Lahainaluna is the place for dust.

Red, red, red!
Everything there is a dusty red,
Their hills are red, and their horses are red,
Though white by nature from tail to head;
There walls are red, and their houses are red,
Though often whitened with lime and lead;
Their floors are red, and their furniture red,
And red the spread of their nicest bed;
Their papers are red, their books are red,
Though *read* they were never by living or dead;
Their students, too, e'en the dullest head,
Are all in a way to be deeply re(a)d;
Aye, often, it must in truth be said,
Their childrens' faces and feet are red;
And who can say, there will not be bred,
Ere long, these dusty domains to tread,
A race of *Adamites*, red from birth,
The color, all over, of mother Earth?
'Tis a thought that enters a thinking head,
In a place where everything else is red.

Aye, red, red, red!
Everything there is a dusty red.

But *dust* in the moral world we find,
And often in clouds that make men blind,
When Passion eager some bubble to chase,
Goes kicking it up on her selfish race,
While the good and the vile alike it clothes,
And much ill temper and sin provokes,
Oh, how much better would men but bind
The unruly winds of a selfish mind,
And blow no dust in each other's eyes,
Nor darken ever Truth's radiant skies,
But keeping the dust beneath their feet,
And breathing an air serene and sweet,
Inhale at once, from heaven above,
The inspiration of peace and love,
And thus to a world of joy give birth,
A manifestation of "heaven on earth,"
A world the very reverse of this,
A world of brothers, a world of bliss. ***.

LAHAINALUNA, Jan. 1, 1847.

[Reported for the Polynesian.]

Court of Oahu.

WOOD *vs.* STARK.—*Action of Assumpsit.*—This case was brought up by an appeal from the court below, and was argued by counsel on both sides, before a jury on the 6th of January, in the Court of Oahu, Judge LEE on the Bench.

The original action was for the recovery of the sum of $55, wharfage due, on account of the bark Toulon, &c.

Dr. Wood (the plaintiff) stated to the court, that he was not a lawyer, and was, in this respect, unarmed, the defendant being provided with counsel; he wished the privilege of introducing J. B. DeFiennes, Esq., as his consel. The Court observed, that there being a rule of Court prohibiting any one from appearing as counsel who had not previously obtained a license to that effect, and Mr. DeFiennes not having complied with that rule, he could not admit him if defendant objected. Defendant having, by his counsel, waived all right of objection, Mr. DeFiennes was admitted as counsel in this case.

J. B. DeFiennes, Esq., for plaintiff, opened the case, by stating to the jury, that this was a plain case; that in June last plaintiff leased from Ladd & Co. the stores and wharf formerly occupied by them in Honolulu. The date of this lease was 9th June, 1846. During the months of September and October last, Mr. Stark, supercargo of the bark Toulon, occupied the above named wharf some two or three weeks. After the Toulon had sailed, plaintiff presented a bill to defendant for wharfage, amounting to $55. Denfendant acknowledged his indebtedness in that amount for the use of the wharf, but stated that Mr. Sea, the Marshal of the Hawaiian Islands, had ordered him to pay over the amount to him. Not being informed by what right Mr. Sea had attempted to collect money belonging to him, plaintiff sued defendant before Judge Andrews for the amount ($55) in dispute, and produced before the judge his lease. Mr. Stark appeared and acknowledged the debt, and his readiness to pay whoever the judge should decide to be entitled to it.

Mr. DeFiennes continued. My lease was the only evidence produced in court. The judge, notwithstanding, decided that defendant should pay the amount claimed into the hands of the court. I appealed from that decision before you, gentlemen of the jury, and claim in virtue of my case (which was the only evidence produced in the case) that you reverse the decree of the court below, and award me a verdict for the $55, and my bill of costs for both trials.

Here counsel for plaintiff rested, stating that he had no other evidence of claim to introduce, whereupon J. R. Jasper, Esq., opened for the defence as follows:

May it please the court, gentlemen of the jury, this is, as my learned friend for the plaintiff has justly remarked, a very plain case. The facts are these—Sometime last fall the bark Toulon contracted a debt of some $55, for the use of a wharf, the property of Ladd & Co. This amount was garnisheed in the hands of Mr. Stark, my client, by H. Sea, Esq., in part satisfaction of a judgment held by Messrs. Pelly & Allan against Ladd & Co. A short time subsequent to this attachment by the Marshal, the Plaintiff, (Dr. Wood) either in person or by his agent, demanded of defendant the amount in dispute as belonging to him, in consequence of a certain lease (the same filed here as evidence by plaintiff's counsel) purporting to convey to him certain premises belonging to Ladd & Co., and, by conveyance, all the rents and profits arising therefrom—this sum having accrued subsequent to the execution of said lease. My client refused to pay to plaintiff, inasmuch as he had been commanded by a mandate of the court to pay the amount to the sheriff for the benefit of Messrs. Pelly & Allan, Judgment creditors of Ladd & Co. Plaintiff brought an action against us for the recovery of the amount, and upon the day of trial presented his lease as evidence of his right to recover. His honor, Judge Andrews, decided that we pay the money into the court subject to the adverse claims of plaintiff (Dr. Wood) and Pelly & Allan. Some days after this decision, his honor, judge Andrews, summoned Dr. Wood and Pelly & Allan to appear in person or by counsel, and put in their respective claims to the money. I was retained by Messrs Pelly & Allan, and appeared as their counsel, Wm. Ladd, Esq., appearing as agent for Dr. Wood, and as counsel. His honor ordered the proceeding, when Mr. Ladd stated "that he claimed the money for plaintiff upon that lease, &c. I then claimed it for Pelly & Allan, on the ground that it had been attached in Stark's hands by the sheriff, for their use, urging that the lease upon which Dr. Wood's claim was based was invalid, and consequently no basis of claim at all. Mr. Ladd expressed some surprise that the lease should be called in question, and prayed a postponment for one week, (which was granted) when he would come prepared to show clearly that his principal was entitled to the money.

On the day appointed, we appeared before his honor, when Mr. Ladd declined to prosecute the matter any further before that court, claiming for Dr. Wood the right of appeal from the decision by which the money was brought there. As counsel for Messrs. Pelly & Allan, I waived the right to press their claim, in order that his honor might entertain the appeal, and give the plaintiff the benefit of a jury. The appeal was taken, and the case is now before you *de novo*.

This, gentlemen of the jury, is the history of the case. We therefore deny that we owe plaintiff anything, never having contracted with him in any way. We also deny that the lease under which he claims this $55 conveys to him any right to the premises upon which that sum has accrued, and by consequence gives him no claim to it, that lease being fraudulent and collusive, as we shall prove.

Here counsel for defence filed in evidence copy of judgment confessed by William Ladd, Esq., in favor of Pelly and Allan, in the name of Ladd & Co, in Nov., 1844, and which was unsatisfied on the 9th of June, 1846.

Mr. Smith, chief book-keeper for Messrs. E. & H. Grimes, was next called as a witness, who testified that Ladd & Co. were in correspondence with Messrs. E. & H. Grimes as late as the 8th of June, relative to certain monies trusteed in their hands by the sheriff, demanding the same, which was refused by the Messrs. Grimes, on the ground that the sheriff had seized it in part satisfaction of a claim against Ladd & Co.

H. Sea, Esq., sworn.—Testified that on the 9th of June he did duly serve a process of the court, of that date, upon the property and person of Ladd & Co., between the hours of 10 and 12 o'clock, A. M., which process was also filed in evidence.

Mr. Ladd sworn.—Testified that Dr. Wood was related by marriage to one of the firm of Ladd & Co.—was on terms of intimacy with the members of that firm—was generally acquainted with affairs of Ladd & Co.—knows most if not all the creditors of Ladd & Co. in Honolulu—knew that Pelly & Allan obtained a judgment against Ladd & Co. in Nov. 1844—might have known that that judgment was not satisfied and returned on the 9th Jan., 1846—might not have known that it was not—could not say—could not say that he knew it was satisfied.

The counsel for defence, stated that he introduced this testimony to show that that lease was entered into by the parties, Ladd & Co. and Dr. Wood in full knowledge of the fact that there was a judgment claim at the time against Ladd & Co., which knowledge was fatal to the validity of lease.

Mr Jasper summed up as follows:

Gentlemen of the jury—I appear before you with the utmost confidence in your intelligence to appreciate, and your honesty to apply, the facts which have been given in evidence before you in this cause. This, gentlemen, is all that I have to ask of you—Intelligently and rightly to apprehend, and honestly to apply the facts. If you do this, your verdict cannot fail to be in accordance with truth and justice, and in favor of my client. And what, gentlemen of the jury, are the facts which we have established before you? First, gentlemen, we have proved that at the time of making that lease, i. e., on the 9th of June, 1846, there was a judgment existing against Ladd & Co. for the satisfaction of which any and all property of Ladd & Co. was liable to be seized in execution.

We have also proved that the lessee, Dr. Wood, knew of the existence of that judgment, and that it was unsatisfied at the time he entered into that lease. And, gentlemen, he must have known that the tendency of that lease, if it stood the test of law, would be to retard, if not wholly defeat, Messrs. Pelly & Allan, in the pursuit of their lawful rights.

But, gentlemen of the jury, I ask you to look at the circumstances under which that lease was executed—for you have a perfect right to infer the intention of parties from the circumstances under which they act. Who is the lessor? Ladd & Co., an embarrassed mercantile firm, unable to meet their liabilities, for it is notorions, nor will the plaintiff deny that they were pressed by their debts, and had been sometime previous to the date of the lease.—Who is the lessee? Dr. Wood, a relative by marriage of one of the firm of Ladd & Co., and the intimate friend of all of them. Above all, gentlemen, look at the peculiar manner in which it is provided that the consideration upon which the lease is based is to be paid. Is it to be paid to the lessor, Ladd & Co.? No, gentlemen; it is provided that the consideration, $1000, be paid to the Hawaiian Treasury—to the court. Am I right, sir? Now, gentlemen, why is this? for it is certainly an unusual way of drawing a lease. I confess, gentlemen, that of all the leases passing through my hands, and I have handled many here and elsewhere, I do not recollect one thus peculiarly worded. The usual form is, that the lessee pay "to us" (the lessor) "our heirs and assigns," &c. Now, gentlemen, how is this to be accounted for? It is most certainly not accidental. Yet there was no arrangement, no understanding with the Hawaiian Treasury Board to this effect. What, then, is the inference in regard to this peculiarity, which is irresistibly forced upon us? I will tell you, gentlemen: the only fair inference is, that both Ladd & Co. and the plaintiff in this case knew that if made payable to Ladd & Co., this $1000 would be liable to attachment in transitu, to satisfy any judgment debt Ladd & Co. might owe at the time; but so provided to be paid, all the benefit of it would accrue to Ladd & Co., while it would be effectually protected from the clutches of that lynx-eyed officer of the law, *alias* the sheriff.

Gentlemen of the jury, you must come to the conclusion that the bare question of right to $55 is not the entire interest involved in this case. I am frank to confess that I look to more than this. In executing that lease, of the 9th June, 1846, an effort was made to cut off and defeat Pelly & Allan in the pursuit of their lawful claim. If that lease will stand the test of law, the effort has been effectual; if not, it has not been effectual.

I contend, gentlemen, that that lease was executed for the very purpose of defeating the claim of Pelly & Allan, and is therefore fraudulent and void.

I will now, gentlemen, read to you the law, both the common and the statute law, as it prevails throughout England and the United States upon this subject, and indeed throughout the civilized world.

Here counsel for defence read from numerous authors. 1 Long on sales, pages 64 and 65; Cow. Rep. 434, case Coadagon *vs.* Kennett, "Lord Mansfield held," &c.; Black. B. II. sec. 297; Story Equity Jurisprudence, page 342, sec. 350, pages 346 and 347, sec. 355; page 363, sec. 369; East. Rep., pages 51 and 52, case sheriff *vs.* Wilkes and others; 1 Burrows' Rep., pages 395, 397, 474 and 475.

Counsel resumed—

Such, gentlemen of the jury, are the facts as they have been adduced in evidence before you, and this is the law in such cases throughout the civilized world. It remains for you to find generally the fact, whether that lease was entered into *bona fide* by the parties to it or not. Now, gentlemen, are you prepared, after all that has been proved before you, to say by your verdict, that there is no evidence of fraud and collusion in that lease?—that there is no evidence that Ladd & Co. and Dr. Wood did not know perfectly well that if Wood could hold the property under that lease, Pelly & Allan would be defeated in their efforts to secure their claim? Gentlemen, you cannot so decide. It is impossible! for if you do so decide, you at once decide this great principle, that a man may, in the midst of pecuniary embarrassments, and the pressure of his debts, lease or convey away to another party all his property, and put it effectually away from his creditors, and not involve a suspicion of fraud! Gentlemen, are you prepared to give such a decision? You are merchants, you are tradesmen, business men in some sort, and if you so decide, that decision will be quoted against you in all after time, when seeking at the hands of a jury of your countrymen your lawful and equitable rights. I shall now, gentlemen, leave the case in your hands. So far as the interests of my client are concerned, they could not be better entrusted. And in taking my seat, allow me to ask you to decide the question in accordance with the facts, and upon the principles of justice and right between man and man. More than this I would not have; less, I cannot ask.

Mr. DeFiennes then closed the argument before the jury as follows:

Gentlemen of the jury, I deny the right of Mr. Stark to impeach the lease on the ground of fraud. That is a matter which concerns only the creditors of Ladd & Co., and no party but a creditor has any right in hi sdefence to alledge fraud in the lease, and I shall be fully prepared to defend myself from that charge (either in law or intent) when made by the party having the right to use it—and the same principle applies with equal force to the alledged judgment in favor of Messrs. Pelly & Allan. If Mr. Pelly really had a judgment unsatisfied at the date of my lease (a fact of which I was not at the time cognizant) that is a fact which concerns Mr. Pelly and not Mr. Stark, and Mr. Pelly only, and not Mr. Stark, has the right to use it to the injury of my lease—and that objection I shall be ready to meet when made by the party having the right to use it. But Mr. Stark being no creditor, must respect the lease.

Here the counsel read from Kent's Com. vol. 2, page 357, note; Peter's Digest, vol. 2, page 466; Ibid 367.

Mr. DeFiennes resumed—

This is the highest authority that can be produced, and contains a very plain, common sense principle, that "every man should mind his own business," &c.

Gentlemen of the jury, I shall not attempt to follow the learned counsel for the defence through all the arguments into which he has endeavored to draw me, as I do not think they have anything to do with the case," &c.

Counsel having closed, his Honor, Judge LEE, charged the jury in substance as follows:

Gentlemem of the Jury:

The case now before you for consideration and decision, is one which was brought into this court by